

TRULINCS 64457066 - MCCUSKER, EDWARD G - Unit: SCH-E-B

FROM: 64457066
TO:
SUBJECT:
DATE: 05/06/2017 08:55:40 AM

United States District Court, Third Circuit
Eastern District of Pa.

Edward G. McCusker Plaintiff

v

17 2235

United States of America, as its employees and agents,
re;

Federal Bureau of Prisons
Ft. Devens Federal Medical Center

Dr. Clyde Barnett

Nurse Taylor

Warden J Grondolsky

other unnamed employees,

named defendants (United States of America) responsible individually and as employees of the United States and Federal Bureau of Prisons.

Civil Complaint Commencement

I respectfully submit this lawsuit for damages due to the defendants violating my Constitutional rights under the 8th Amendment, and U.S.C. 42 1983, Pro se, Edward G McCusker.

I am entitled to significant monetary damages and other relief under: Bivens vs Six unknown names and Federal Tort Claims Act. (FTCA)

It has been conceded that I have properly exhausted the Administrative remedy's of the BOP and have been given permission to sue under the FTCA (Exhibits attached). It is conceded that I have "properly" complied with 42 USC 1997 e(a) and that this Civil Action is timely filed. I do ask the Court to take Judicial Notice to the exhibited envelope sent from the BOP Region to me, the date of the letter is Nov 28th 2016 but the envelope is postmarked Jan 4 2017. It is also duly noted that I did not arrive at Schuylkill Camp until Jan 4th 2017, so the proper service date should be Jan 4th 2017 and the 6 month time frame should run from that date. It is also noted that BOP officials initialed the envelope.

I was an inmate at FMC Devens in Ayer, Ma. and was the victim of an attack which resulted in severe permanent injuries. I was rushed via ambulance to the Emergency Room in Lionsville Ma where I was evaluated and it was determined that I suffered extensive facial, tooth and eye and ear injury's. The ER Dr. at that facility determined that I had suffered a severe injury to my left eye and ordered that I be transported via ambulance to Harvard Medical Center eye Hospital, (Boston Eye) I was seen by an Ophthalmologist at Boston Eye and it was determined that I suffered severe injury's (vision loss) to my Eye and eye socket (a Fractured Orbital Bone). Both outside Dr.s ordered the BOP medical staff to supply me ice for severe swelling and to prevent further damage and reduce pain, they also ordered Narcotic Pain medicine due to the severity of my injury's. My face and eye was so swollen my eyes were swollen shut, I had bloody discharge flowing from both eyes, the Dr.s ordered me to keep ice on the area 24hrs a day until the pain and swelling subsided. I was discharged from Harvard Eye center and transported back to FMC Devens where I was placed in solitary confinement, I pleaded to have ice delivered and pain medicine due to severe swelling and severe pain, I had fractured three teeth and I had a fractured orbital and traumatic shattered cataract that requires surgery to repair, my Pupil is fixed in a severe dilated position and does not react to light, this is permanent, I was DENIED ICE and PAIN MEDICINE by the staff despite my repeated requests, this had led to permanent injuries and future permanent suffering. I asked to see my Dr. (Dr. Barnett) several times but he never showed, I was told by the staff he "was drunk" and never see patients in solitary. I was then told by staff members that Dr. Barnett would not be seeing me due to his removal from the compound escorted by U.S. Marshals for "substance abuse" on the job. I was never seen by another Dr. for weeks, I was in SEVERE pain and could not even eat due to my not being able to see my food. I complained numerous times but was told I would not be getting "ICE" or Pain Meds ... To be denied ICE is so beyond gross negligence that is indescribable. The pain and suffering I endured because I was abandoned by my Dr. and the Medical staff denied basic ICE and PAIN meds. A dog would have been given better medical care at the SPCA, a first grader knows to apply ice to injury's to relieve pain and swelling. I now have permanent injury's due to this neglect, I suffered undue emotional distress, unreal pain and am forever going to have to live with the results of this gross negligence, I am permanently injured and disfigured as a result of this negligence. I claim deliberate indifference, medical negligence, medical abandonment, medical malpractice, deviation from experts orders, deviation of standard medical care, intentional infliction of physical duress and emotional duress, wanton reckless disregard to provide basic medical treatment. I bring these timely and properly filed claims under several violations of the Constitution. The BOP has never contested my claims that I was denied ICE and PAIN medicine in ANY of my Admin or SP-95 Claims, this should be deemed undisputed by the Court. To the extent I need a medical expert opinion, I argue it is not necessary given the fact that Two outside Physicians ordered the BOP to treat me with ICE and PAIN medicine. It has gone undisputed that the

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BOP ignored these orders of TWO outside Medical Experts even though one was a Harvard Trained Eye Dr. ICE and PAIN medicine is so elementary that to deny those items to me is "shocking to the conscience" I allege ALL defendants were either collectively deliberately indifferent or individually indifferent and collectively either through actual or constructively negligent to my medical needs and medical rights under the Constitution. I also allege that ALL defendants had known that Dr. Barnett was grossly ineffective and had the potential to seriously harm his patients and were deliberately indifferent in their ignorance of this information. I was told by a Medical Staff member that I had "NO DR. assigned to me" because Dr. Barnett was removed from the compound and no new Dr. was overseeing my care and I would not be seeing a Dr. until the Medical staff supervisors assigned me a new Dr. This was never done while I suffered in excruciating pain, this is beyond gross negligence. The evidence is all in my records, the BOP counsel specifically states that they reviewed my medical records and they never disputed my claims of being denied PAIN meds and ice, BOP ignores the fact that two outside experts of medicine ordered those two basic human right remedies.

I claim the following violations under the 8th Amendment and the result of Cruel and Unusual Punishment ,including but not limited to;

Medical negligence leading to permanent debilitating injury's

Physician abandonment

Medical Malpractice

Undue excruciating pain and suffering

Undue Emotional distress

Permanent disfiguring injuries

Deliberate indifference

Intentional infliction of emotional distress

Negligent infliction of emotional distress

Denial of basic care

Violation under USC 1983 rights

Violations of my 8th amendment rights, cruel and unusual punishment

BOP Admin guilty of deliberate indifference

BOP had knowledge of Dr. Barnetts consistent sub standard care

Staff at Devens ignored Medical negligence issues

Staff knew of Substance abuse problems of Dr. Barnett

Staff knew of Medical abandonment by Dr. Barnett

Staff knew that "ICE" was denied to me despite to Dr.s orders, one Eye specialist from Harvard

Staff knew of PAIN meds not being dispensed despite Dr. s orders

Breach of Duty

Breach of policy of BOP protocol as published Aug 23 2012 classifications of Medically Necessary; Acute or Emergent; Severe

Trauma to the head area, Injury's involving Vision, Eye injury's.

Breach of Supervision duty's

My claims have easily surpassed any prong needed for negligence because a "laymen with no medical education" could easily come to the conclusion I was to be treated with ice and pain meds. The BOP has not contested I was denied Ice or Pain medication throughout the complaint process. In their letter (attached) the claim I was "stable" basically saying I was breathing, they intentionally do not mention that I was seen by a Harvard trained Eye Dr. and that the said Dr. ordered I have Ice and Pain med. The BOP does not deny I repeatedly asked for Ice and Pain meds only to be denied. The BOP does not deny that Dr. Barnett was removed from the compound by US Marials due to his continual intoxication and allegedly stealing NARCOTICS from the Hospital Pharmacy. The BOP does not deny I was not seen by this Dr. as required under the BOP standard of care protocol. Head injury's and Eye injurys are categorized as "emergent" and a Dr. is required to see the patient immediately, mine was never down to see me due to his intoxication. I was told by a medical staff member that they felt I needed to be seen as well, the Dr. had to approve ICE and PAIN meds and mine was never down to see me. This is deliberate indifference because the staff and the BOP knew well or should have known the Dr. was neglectful and had a continuous pattern of neglect. I was also told by a Medical staff employee that FMC Devens policy dictated that I was not allowed ICE, this is Deliberate indifference of the Warden and Medical Staff, I demand \$3,000,000 in monetary damages as a result of this blatant disregard for my rights to proper medical care as guaranteed under the Constitution.

To prevail on a Medical Negligence, Deliberate indifference, of Staff, see Estelle v Gamble Sup (1976) 429. U.S. at 104,, "serious medical need" must be demonstrated and "that failure to treat a prisoners condition could result in further significant injury or wanton infliction of pain"...It is clear my claim meets that prong. Furthermore, "Examples of serious medical needs include the existence of an injury that a reasonable doctor or patient would find worthy of comment or treatment; the presence of a medical condition that significantly affects the individuals daily activities; or the existence of chronic and substantial pain" Lopez 203 f.3d at 1131-1132 citing McGuckin 974 F.2d at 1059-60(1st Crt)

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second prong, the plaintiff must show the defendants response to the need was deliberately indifferent., This second prong is met by showing a). a purposeful act or failure to act to a prisoners pain or possible medical need and b). harm caused by the indifference,....To State a claim and prevail in a claim of a violation of my Amendment rights under the Constitution I must have plead a deliberate indifference to a serious medical need as described in Estelle vs Gamble,,, "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would recognize the necessity for a doctors attention" My injuries were ordered to be treated with ICE and PAIN Med not by one Dr. but two Dr's one of which was a Harvard Trained EYE Dr..from Boston Eye,,,the employees of the United States disregarded and were indifferent to that obvious need. I argue that I do Not need an "Expert Opinion" due to the elementary denial of a necessecity, also, TWO outside Expert Physicians ordered the ICE and PAIN meds. The BOP has not disputed these facts nor the fact that I was denied the ICE and PAIN meds by the employees of the United States in violation of my 8th Amendment rights.

It is undisputed by the BOP that I was denied ice and Pain medicine, it is undisputed that two outside Dr's ordered I have those two treatments. The wanton and reckless non action of the BOP employees led to my Permanent injury's,,I have permanent disfiguration of my face and eye,,I suffer from Chronic Migraines, chronic vertigo, Chronic vision issues,and other including PTSD from intentional "infliction of emotional distress"

To prevail on a negligence claim in Massachusetts ,,I must have demonstrated 1.a legal duty to provide care, 2, a breach of that duty. 3, proximate or legal cause and 4 actual damage or injury..Jorgenson v Mass Port Authourt 905 F2d. 515,522 (1st Cir) 1990...I have made these claims and they have gone uncontested by the BOP in the Admin process.

To prevail on an Infliction of emotional distress claim,,,I must have demonstrated "applies where an actor knows such distress is certain or substantially certain to result from his conduct. or a "deliberate disregard of a high degree of probability that the emotional distress will follow"

Dr. Barnett, the staff at FMC Devens the Warden are all guilty of those prongs. The Staff and Warden were well aware of the incompetence and outrageous behavior of Dr. Barnett,it was well known within the staff that Dr, Barnett was a"drunk" and a "drug addict"..This was quoted by FMC Devens Staff to me.

Deliberate indifference prevails when I demonstrated that "it so clearly inadequate as to amount to a refusal to provide essential care" and must be "so inadequate as to shock the conscience" .Torraco v Maloney 923 F.2d 231,234 (1st Ct. 1991)

It is important to note that under Massachusetts State law, that "resipsa loquitui" is applicable here...My claims are such that a "lay trier" could easily come to the conclusion that "Ice and Pain Medicine" was the normal standard of care. I was denied both.

TRULINCS 64457066 - MCCUSKER, EDWARD G - Unit: SCH-E-B

FROM: 64457066
TO:
SUBJECT: 2nd
DATE: 05/06/2017 09:03:07 AM

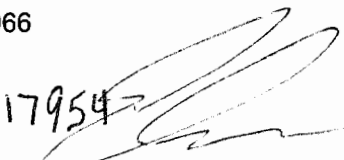
I allege that the medical staff collectively and individually deviated from a normal standard of medical care which left me in unimaginable pain and emotional distress that comes along with pain at that level. The letter attached as an exhibit from the Counsel for the BOP is proof in itself that they went over my "medical records" from that time period and despite my claims in ALL my Admin complaints and the SP-95 FTCA claims they do not deny I was denied PAIN meds and ICE despite having severe injury's and injury's that left untreated would lead to permanent life changing injury's., There is a very GOOD and valid reason why TWO outside Dr's ordered ICE , it was to stop the progress of injury's that left untreated,(despite their orders), would lead to permanent life changing injuries's such as mine, to be denied that basic care and to be left in solitary without ANY ICE or Pain Meds is deliberate indifference and a clear violation of my Rights under the Constitution, to make it even more ridiculous, FMC Devens is a Federal Medical Center, they have extensive knowledge and extensive experience in Medical treatment so they cannot claim ignorance or lack of Medical staff training, they to SPECIFICALLY FOLLOW SPECIALIST'S ORDERS.

The following claims I made throughout the Administrative and FTCA period and process which afforded the BOP pleny of time to investigate and either confirm or deny my claims, the validity these claims were not disputed, defended, or opposed as being invalid or untrue, these claims I argue should be worthy of Summary Judgment status and ordered so, they include but not limited to;

- 1 My Claim I was the victim of an attack
- 2 My Claim that I was DENIED ICE
- 3 My claim TWO outside Dr's ordered ICE to be provided by the BOP
- 4 My claim that I was denied PAIN medicine
- 5 My Claim that TWO outside Dr's ordered Pain Medicine to be provided by the BOP
- 6 My Claim that Dr.Clyde Barnett was removed from the Compound by US Martial's for Substance Abuse violations.
- 7 My Claim that it was well known that Dr. Barnett was a "drunk" and was grossly ignoring his duty's.
- 8 My Claim that I suffered a "Broken Orbital Bone"
- 9 My claim that I suffered permanent Eye injury's
- 10 My Claim that I was told by medical staff member that it was against policy to give me ice.
- 11 My Claim that I was seen by a Harvard trained MD Eye Dr. at Boston Eye.
- 12 My Claim that I was in severe pain due to this neglect
- 13 My claim that I suffered SEVERE Swelling.
- 14 My claim I suffered severe dental injury's
- 15 My claim that as a result of the lack of medical treatment I suffer from permanent injury's (currently being treated by BOP Dr's).
- 16 My claim that I am permanently disfigured due to the deviation of standard medical care of BOP employees
- 17 My claim that the BOP was or should have been aware of Dr. Barnetts major deficiencies.
- 18 My Claim that the Warden was well aware of Dr. Barnetts continual misconduct and lack of professional treatment of patients and substance abuse problems which led to deficiencies in care of patients.
- 19 My Claim that I suffered eye injury's requiring Surgery to replace a "shattered lens"
- 20 My claim that I suffered permanent facial disfiguration.
- 21 My Claim that due to the gross deviation in medical care in defiance of treatment prescribed by TWO outside Dr's, I now suffer from chronic migraines,dizziness, vertigo, pain,and other issues, and now have to take medicine daily.
- 22 My Claim that due to the gross deviation of medical care from the Standard of Medical care, I suffer from PTSD and anxiety.
- 23 My claim that I was without a Dr. assigned to my treat my needs as required under the 8th Amendment and under BOP published protocol for a long period of time.

I certify that the contents of this Complaint and the claims made are true and accurate under penalty of perjury,
Respectfully submitted Pro Se,

Edward G. McCusker
inmate number 64457-066
FPC Schuylkill
PO Box 670
Minersville, Pa. 17954

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(4)

 5/6/17

1/4/17
U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House - 7th Floor
2nd and Chestnut Street
Philadelphia, PA 19106
Official Business

PHILADELPHIA PA 191

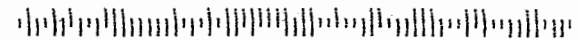
04 JAN 2017 PM 10 1

0001126544 JAN 04 2017
MAILED FROM ZIP CODE 19106

CZ

Edward McCusker, Reg. No. 64457-066
FCI Schuylkill
P.O. Box 759
Minersville, PA 17964

17964-075959





Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets

November 28, 2016

Edward McCusker
FCI Allenwood Low
P.O. Box 1000
White Deer, PA 17887

RE: Administrative Claim No. TRT-NER-2016-04451

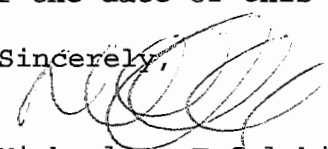
Dear Mr. McCusker:

Your Administrative Claim No. TRT-NER-2016-04451, properly received on June 1, 2016, has been considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. §2672, under authority delegated to me by 28 C.F.R. §543.30. Damages are sought in the amount of \$3,000,000.00 based on a personal injury claim. Specifically, you allege on June 4, 2014, the staff at FMC Devens did not provide you with adequate medical after you were assaulted by another inmate, resulting in injuries. You also allege staff misconduct by a Health Services staff member at FMC Devens.

An investigation, including review of your medical records, shows on June 3, 2014, you were evaluated by the Health Services staff at FMC Devens after you reported being assaulted by another inmate. Subsequently, you were transferred to two outside medical centers via ambulance, for further evaluations and treatment for injuries to your face, ear and tooth. On June 4, 2014, you were returned to FMC Devens and evaluated by Health Services staff, your condition was noted as stable. The Health Services and Dental staff continued to provide you with appropriate follow-up care. Following investigation of the assault, you were appropriately separated from the other inmate. There is no indication of any wrongdoing on the part of the staff at FMC Devens. There is no evidence that you experienced a compensable loss as the result of negligence on the part of any Bureau of Prisons employee. Accordingly, your claim is denied.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,


Michael D. Tafelski
Regional Counsel

cc: J. Grondolsky, Warden, FMC Devens

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 16-3928

United States v. McCusker
(E.D. Pa. No. 2-09-cr-00771-001)

To: Clerk

1) Motion by Appellant for leave to appeal in forma pauperis

The foregoing motion to proceed in forma pauperis is granted. The Court may reconsider in forma pauperis status or request additional information at any time during the course of these proceedings.

For the Court,

s/ Marcia M. Waldron
Clerk

Dated: November 30, 2016

kr/cc: Edward G. McCusker
Nancy Rue, Esq.

TRULINCS 64457066 - MCCUSKER, EDWARD G - Unit: SCH-E-B

FROM: 64457066

TO:

SUBJECT: motion

DATE: 05/06/2017 09:05:23 AM

U.S. DISTRICT COURT 3rd Circuit, Eastern District of Pa.

Motion to appoint Counsel in this action

Motion to appoint Medical expert in this action if required.

I respectfully submit these Motions Pro se, Edward McCusker

I have been granted Informa Pauperis Status by this Court (see attached order)

I argue that due to the complexity's of this complaint and the lack of resources at the prison to properly pursue this claim, I am entitled to appointment of counsel.

I argue that to the extent it is needed, I am entitled to a Medical expert to be appointed on my behalf.

The medical expert I argue is not even necessary under Massachusetts Law, my claims are clearly discernable by a layperson and this Court can easily come to the conclusion I should have been administered ICE and Pain meds and the fact the BOP does not deny I was seen by TWO outside Dr's that ordered the same, one being a Harvard Medical trained Dr. at Boston Eye. notably, the BOP counsel neglects to note that in his letter of my qualifying for FTCA claim. Under Massachusetts State Law regarding Medical Expert opinion, no Cert of Merit is required under Ma. State law, in that context, the law permits the Court to determine whether my claims fall under the "res ipsa loquitur" exception, basically telling the Court they have discretion, if the treatment or lack of such is so clear that a layperson could determine whether the claims made in the complaint are easily identified as being "necessary treatment", then no expert is required. Also, it is vital to point out, that the Expert Opinion prong has already been clearly met in my case, a Certified Licensed Physician, Harvard Trained Eye Dr. evaluated me in person at the time of injury and determined I was in need of ICE and PAIN medication upon discharge, also another outside Dr. at the ER of Lionsville, determined the same treatment was required, there is no need to have further expert opinions on the matter of whether or not I should have been treated with ICE and Pain meds, and, the lack of such treatment is "so evident as a layperson could determine is was negligent in denying that basic care" it is also very notable that the BOP does not dispute these opinions of the Dr's. Given the fact that the BOP does not even dispute I was denied ICE or PAIN meds, it is a waste of judicial resources and taxpayer money to appoint one, but to the extent this Court determines that one is required, I ask the Court to grant this Motion to appoint a medical expert on my behalf to testify to my needing ice and pain medication. It is more than apparent that the right course of action in treating injury's such as mine is well published and a Boyscout taking his first aid badge test is trained to treat with ICE..it is insulting to the Court and to the BOP to have to appoint an expert to further concur that the prescribing Dr's of two outside facility's ordered I have ICE and PAIN meds this was the proper treatment and "Standard of Care" and the denial of those two ordered items is a gross deviation from a standard of medical care, the denial of ICE and Pain meds to treat my injuries leads to unimaginable pain and leads to further permanent damage to the body, this is why it is ordered by Dr's worldwide.

Respectfully submitted, Pro Se
Edward McCusker



5/6/17



5/6/17

TRULINCS 64457066 - MCCUSKER, EDWARD G - Unit: SCH-E-B

FROM: 64457066

TO:

SUBJECT:

DATE: 05/11/2017 04:52:41 PM

Dear Clerk(s) for Third Circuit Eastern District of Pa.,

This is a brand new lawsuit that I am filing,, it has nothing to do with the Appeals Court...It has nothing to do with my criminal dockets either,,,This was sent back to me here from the Appeals Court after your office sent it erroneously to the Appeals Court because my Informa pauperis granting had their letterhead,,,this is in need of being assigned a new docket/case number in this District Court and the Martial's are to serve it on the defendants (United States of America,.Defendants) and a new Judge Assigned to it here in the Third Circuit District Court,,,I have attached the informa pauperis order so I can file it without any filing fee in your office...I have also included Motions I need to be filed with the suit

Please file it and assign it a case number immediately as it is extremely time sensitive...

Thank you,,

Edward McCusker inmate# 64457-066

FPC Schuylkill

Po box 670

Minersville, Pa. 17954

